

## Interview Summary

Application No.  
09/207,649

Applicant(s)

Lindquist

Examiner

Sharon L. Turner, Ph.D.

Group Art Unit

1647



All participants (applicant, applicant's representative, PTO personnel):

(1) Sharon L. Turner, Ph.D.

(3) \_\_\_\_\_

(2) Gina Shishima

(4) \_\_\_\_\_

Date of Interview 12-20-01 12-23-01

Type: a)  Telephonic b)  Video Conference  
c)  Personal [copy is given to 1)  applicant 2)  applicant's representative]

Exhibit shown or demonstration conducted: d)  Yes e)  No. If yes, brief description:

Claim(s) discussed: \_\_\_\_\_

Identification of prior art discussed:

Agreement with respect to the claims f)  was reached. g)  was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

*Inquiry for withdrawal of finality. Applicants referred to 37 CFR 1.181(f) by Rob Hill. Applicants amendental to claim 1 has changed the scope of claim 1 and introduces 112 2nd paragraph issues which were previously noted for claim 1. These changes necessitate the new rejections of record. A CRAFT or brief should be filed.*

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i)  It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

*Done  
12-23-01*

*12-23-01*

Examiner Note: You must sign this form unless it is an attachment to a signed Office action.

The various delegations to various Office officials are set forth in this Chapter.

The delegations set forth in this Chapter do not confer a right to have a matter decided by a specific Office official, rather, such delegations aid in the efficient treatment of petitions by the Office. A delegation of supervisory or higher level review authority over a matter carries with it the authority to decide the matter *ab initio*.

## 1002 Petitions to the Commissioner

### 37 CFR 1.181. Petition to the Commissioner.

- (a) Petition may be taken to the Commissioner:
  - (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;
  - (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and
  - (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.
- (b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.
- (c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.
- (d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.
- (e) Oral hearing will not be granted except when considered necessary by the Commissioner.
- (f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.
- (g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

### 37 CFR 1.182. Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

### 37 CFR 1.183. Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

Petitions on appealable matters ordinarily are not entertained. See MPEP § 1201.

The mere filing of a petition will not stay the period for replying to an examiner's action which may be running against an application, nor act as a stay of other proceedings (37 CFR 1.181(f)). For example, if a petition to vacate a final rejection as premature is filed within 2 months from the date of the final rejection, the period for reply to the final rejection is not extended even if the petition is not reached for decision within that period. However, if the petition is granted and the applicant has filed an otherwise full reply to the rejection *within the period for reply*, the case is not abandoned.

37 CFR 1.181(f) provides that any petition under that rule which is not filed "within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely." Often, the "action or notice from which relief is requested," for example, a requirement for a new drawing, is included in the same letter as an action on

the merits of the claims, the latter having a 3-month period for reply. Under such circumstances, if applicant requests reconsideration, under 37 CFR 1.111(b), of the requirement for a new drawing, the examiner's action on this request, if adverse, establishes the beginning of the 2-month period for filing the petition. The petition must be filed within this period even though the period for reply to the rejection of the claims may extend beyond the 2-month period. The 2-month period for filing timely petitions set forth in 37 CFR 1.181(f) applies to any petition under 37 CFR part 1, except as otherwise provided. A number of sections (e.g., 37 CFR 1.377, 37 CFR 1.378, 37 CFR 1.644, and 37 CFR 1.740) specify the time period within which a petition must be filed (or may be dismissed as untimely). The 2-month time period in 37 CFR 1.181(f) applies to a petition under any section (e.g., 37 CFR 1.182 and 37 CFR 1.183) that does not specify the time period within which a petition must be filed. The 2-month period is not extendible under 37 CFR 1.136(a) since the time is within the discretion of the Commissioner. Form paragraph 10.20 may be used where an insufficient fee was filed with a petition or a request.